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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/955,798	09/19/2001	Daniel Albertus Jozef Dijis	2120/77997	1409

7590 05/25/2005

Michael B. Lasky
Altera Law Group, LLC
6500 City West Parkway
Suite 100
Minneapolis, MN 55344-7704

EXAMINER

WEINSTEIN, STEVEN L

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 05/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/955,798

Applicant(s)

DIJS, DANIEL ALBERTUS JOZEF

Examiner

Steven L. Weinstein

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 February 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 40-61 is/are pending in the application.
- 4a) Of the above claim(s) 40-54 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 55-61 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Art Unit: 1773

Claim 54 is withdrawn from further consideration as being drawn to a constructively non-elected invention. Claim 54 recites an empty coffee pouch. The invention finally rejected before the filing of the RCE was directed to a coffee pouch containing coffee.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 55-61 are rejected under 35 U.S.C. 103(a) as being unpatentable over Siccardi (EP'775) in view of applicant's admission of the prior art, further in view of Bosch-Siemens (DE '109), Illy et al (EP' 462), Bloemen (Belg. '881), Cisaria ('741), Mac Corkell ('474), Blanc ('149), Illy ('694) and Grykiewicz et al ('787), further in view of Carte Noire package (1996), the Advertisement for Carte Noire (3/31/95), the Advertisement for Gino Rossi in "Best Made In Italy" (1993), the Advertisement in "Vending Magazine" (1985), and the Advertisement in "Tea and Coffee J. (1995) for the reasons fully and clearly detailed in the Office actions mailed 11/20/2003, 8/21/2003, 1/23/2003, and 3/26/2002.

All urgings for patentability found in the records have been fully and carefully considered but are not found to be convincing. The claims are all directed to a coffee containing punch, which would have the capability of being used in a coffee machine that is not positively recited. The pouch is recited as having a pill-shaped central portion

Art Unit: 1773

surrounded by a flat annular sealing portion and dimensioned to fit into the well of a coffee machine. As evidenced by the art taken as a whole, the art is replete with examples of coffee filter pouches having pill shaped central portions surrounded by flat annular sealing portions and dimensioned to be placed in wells of a coffee machine. The structure of the well or any other structure of the coffee machine is not a positive recitation of the claims and would not be limiting to the extent that the coffee filter pouches of the prior art in their teaching of the shape and dimensions to fit the wells would inherently have any capability recited or it would have been obvious to modify shape/dimensions to impart such capability. For example, the pouches would be capable of resting on any well, bottom structure since that is what the art teaches.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Art Unit: 1773

Any inquiry concerning this communication from the examiner should be directed to Steven L. Weinstein whose telephone number is (571) 272-1410. The examiner can generally be reached on Monday-Friday from 6:30 a.m. to 3:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

S.L. Weinstein/dh
April 29, 2005

Steven Weinstein
STEVE WEINSTEIN
PRIMARY EXAMINER 1761